

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7310 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ZALMOR GRAM PANCHYAT TALUKA KANKREJ

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7310 of 2004
MR BAIJU JOSHI for Petitioner No. 1
MR DIPEN DESAI, Ld. AGP for Respondent No. 1-3
NOTICE SERVED for Respondent No. 1
RULE SERVED for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. The petitioner has preferred this petition challenging the public notice dated 27.5.2004 and to direct the respondents not to disturb or give away any portion from the Gauchar land as mentioned in para 2.2 and 2.3 for any purpose whatsoever and the petitioner has also prayed for giving directions to Government to identify the same as Gauchar land and to vest such land into the Panchayat to utilise only for Gauchar land.

2. Heard Mr.Joshi, learned Counsel for the petitioner and Mr.Desai, learned AGP for the State respondents.

3. The contention raised on behalf of the petitioner is that initially the land was surrendered by the Panchayat for allotment to Zalmor Samudayik Agriculture Co-op Society. However, thereafter the land is not allotted to the said Society by the Collector and, therefore, Mr.Joshi submitted that the said land is now proposed to be allotted to landless persons without there being any resumption of the land once again for such purpose of allotting to the landless persons. Mr.Joshi also submitted that after the order dated 23.6.1998 subsequently another order dated 3.11.1998 has been passed by the Collector for allotment of the land admeasuring 15 hectares from the very survey No.45 and, therefore, the Panchayat considered that the very land which was resumed for allotment to Zalmor Samudayik Agriculture Co-op Society is allotted for National Water Reservoir Development Scheme and, therefore, he submitted that now if the land admeasuring 30 acres is allotted for the purpose as per the advertisement, no land will be available to the Gram Panchayat for grazing of the cattle over Gauchar land and he also submitted that consequently the residents of the Village and also their cattle would suffer and, therefore, Gram Panchayat has approached this Court by preferring this petition.

4. Mr.Joshi also submitted that there is no identification or marking of the area of the land which is proposed to be allotted and, therefore, he submitted that in any case such direction may be given to the Revenue Authority for such purpose.

5. Mr.Desai, learned AGP has supported the action by relying upon the affidavit filed by Mr.Nilesh Kumar Dubey, Dy. Collector, Deesa and he submitted that the possession of the land in question is already with the State Government and, therefore, there is no question of resuming the land again and Mr.Desai has relied upon the panchnama prepared on 5.4.2003 of the land in question

and, therefore, he submitted that the action is legal and valid.

6. Considering the above, it appears that when the Gram Panchayat itself voluntarily surrendered the land in question to the State Government as per the resolution of Gram Sabha dated 12.11.1997, there is no question of procedure required to be followed of resumption of the land. It is true that the Gram Panchayat surrendered the land for allotment to the said society, in whose favour, ultimately the order has not been passed by the Collector, but thereby if the State Government is desirous to allot the land to other landless persons, no such right can be read with the Gram Panchayat for objecting to the utilisation of the land for other public purpose. The land is proposed to be allotted to the landless persons and such purpose can be said as public purpose. The area of the land which is given for Water Reservoir Development Scheme admeasuring 15 hectors is a different land and the said aspect is not even under challenge in this petition. Further, it has been stated in the affidavit-in-reply that the order of the District Collector refusing the allotment to Zalmor Samudayik Agriculture Co-op Society is confirmed by the State Government on 9.4.2001 and the land is in possession of the State Government. If the State Government is in possession of the land and the same is proposed to be allotted to the landless persons, it cannot be said that the action is arbitrary or unreasonable. The contention that the resumption was for other public purpose, in my view, cannot be accepted because once the land is surrendered to the State Government, may be for "A" purpose, it can be used for other purpose by the State Government. Ultimately the ownership of the land in question vested to the State Government and no such right can be read with the Gram Panchayat for challenging the action for allotment of land merely because formerly the land was in its possession prior to the surrendering of the same. The contention raised on behalf of the petitioner that no land would be available for grazing of the cattle can be considered only if the land is to be used for the purpose other than public purpose. It is apparent that the land is to be used and to be allotted to the landless persons which can be said to be a public purpose for the human-beings. As the land is to be given for earning livelihood to the human-being and more particularly landless persons, such action of the Authorities for not making available for grazing of the cattle cannot be said to be unreasonable or arbitrary. The internal instructions of the Government of maintaining a particular area of the land on the basis of

number of cattle available cannot be said as having any statutory force.

7. The contention raised that the Gram Panchayat was under the impression that the land which was surrendered is allotted for National Water Reservoir Development Scheme, is without there being any basis for such purpose. The allotment order is a different order and there is no challenge to the said order. In absence of any material produced on record to know that the land allotted for National Water Reservoir Scheme is the same land, the said contention of Mr.Joshi cannot be accepted.

8. However, if the petitioner Gram Panchayat is desirous to have the exact location of the area which is proposed to be given to landless persons, it would be for the Gram Panchayat to make appropriate Application to the District Collector for such purpose and if such an application is made the area of the land shall be demarcated properly with a view to see that it may not create any further complication after allotment even if the allotment of the land is made by the Government to landless persons as per the notification.

9. Under the above circumstances the petition is meritless and hence rejected. Rule discharged. I.R. vacated. No order as to costs.

15-12-2004 (Jayant Patel, J.)

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